

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-versus-

STEVEN DONZIGER,

Defendant.

19-CR-561 (LAP)

11-CV-691 (LAK)

ORDER

LORETTA A. PRESKA, SENIOR UNITED STATES DISTRICT JUDGE:

In an abundance of caution, this order is issued to put Mr. Donziger's former lead counsel, Andrew Frisch, who has been conditionally allowed to withdraw, on notice that he may be required to serve as Mr. Donziger's attorney at the trial long scheduled to begin on September 9, 2020.

On July 4, 2020, Mr. Frisch (who had represented Mr. Donziger since August 11, 2019) moved for leave to withdraw as Mr. Donziger's lawyer. (Dkt. nos. 11, 98.) At that time, trial was (and at all times remained) set for September 9, 2020, having been adjourned from the initial trial date of June 15. (See dkt. no. 87.) Mr. Frisch gave no reason for his withdrawal request, noting only that Richard Friedman--who was admitted pro hac vice to represent Mr. Donziger--would be lead counsel. (Dkt. nos. 72, 98.) The Court granted Mr. Frisch's withdrawal motion on the express condition that such withdrawal would "not affect the trial date," which was then and is now September 9,

2020. (Dkt. no. 99.) Neither Mr. Frisch nor any other defense lawyer objected to that order in any respect.¹

On July 29, 2020, Mr. Donziger's current defense team moved to postpone the trial for a number of reasons, including their views regarding the current travel restrictions and health risks they assert are imposed by the COVID-19 pandemic. (Dkt. no. 111, 119.) On August 17, 2020, the Court denied that motion and directed that trial would proceed on September 9 as long scheduled and as they each knew when they each appeared herein. (Dkt. no. 124.) The Court noted that at least two of Mr. Donziger's attorneys -- Mr. Friedman and Ms. Regan -- would be able to attend the trial in person and that his remaining attorneys could participate by videoconference. (Id. at 3-5.)

It now appears that Mr. Frisch's conditional withdrawal as Mr. Donziger's counsel might indeed end up affecting the trial date for two reasons. First, Mr. Friedman and Ms. Regan have moved for reconsideration of the Court's order declining to delay the trial, and, although briefing has not yet closed, the motions suggest that defense counsel, all of whom report that they live outside New York State, might be unwilling appear for the long set September 9 trial date given their articulated concerns about contracting COVID-19 while traveling to New York

¹ Mr. Donziger now has four lawyers of record: Mr. Friedman, Lauren Regan, Zoe Littlepage, and Martin Garbus. (Dkt. nos. 72, 81, 86, 101.)

City. (See dkt. no. 130, 132.) Second, at the Curcio hearing held today on the issue of Mr. Friedman's and Ms. Littlepage's potential conflicts as a result of being copied on certain correspondence the special prosecutors plan to introduce as evidence against Mr. Donziger, Mr. Donziger expressed the desire to consult with independent counsel to understand and receive advice as to whether he should waive the potential conflict.² The outcome of that process remains unclear, but one possibility is that the Court finds Mr. Friedman and Ms. Littlepage to be conflicted and that Mr. Donziger declines to waive that conflict, thus depriving him of their services as trial counsel.

If Mr. Donziger's current counsel declines to attend the long-scheduled trial in person and Mr. Donziger finds that unacceptable, or if Mr. Donziger declines to waive any potential conflict with respect to Mr. Friedman and Ms. Littlepage that the Court might find to exist, the condition on which the Court permitted Mr. Frisch to withdraw as Mr. Donziger's counsel--i.e., that his withdrawal "not affect the trial date"--would not be satisfied, and the Court's order conditionally allowing his withdrawal would be null and void. Although it remains to be seen how this situation will play out, out of an abundance of caution and so that he can plan, Mr. Frisch is hereby put on

² The Court has directed that CJA counsel be available to advise Mr. Donziger in this context, and an attorney from the CJA panel was present at today's hearing.

notice that he may be called on to handle Mr. Donziger's trial defense, which will commence on September 9, 2020, just as it was scheduled to when Mr. Frisch made his motion.

SO ORDERED.

Dated: August 24, 2020
New York, New York

A handwritten signature in black ink, reading "Loretta A. Preska". The signature is written in a cursive, flowing style.

LORETTA A. PRESKA, U.S.D.J.